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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. **2010 - 249**

12 **JOHN JOSEPH HAYES**
6015 Laguna Vale Way
13 Elk Grove, CA 95758
14 Registered Nursing License No. 403011

ACCUSATION

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
19 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
20 of Consumer Affairs.

21 2. On or about August 31, 1986, the Board of Registered Nursing issued Registered
22 Nursing License Number 403011 to John Joseph Hayes (Respondent). The Registered Nursing
23 License was in full force and effect at all times relevant to the charges brought herein and will
24 expire on August 31, 2010, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Registered Nursing (Board),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

• • •

6. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

• • •

"(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section."

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1 7. Section 820 of the Code states:

2 “Whenever it appears that any person holding a license, certificate or permit under this
3 division or under any initiative act referred to in this division may be unable to practice his or her
4 profession safely because the licentiate's ability to practice is impaired due to mental illness, or
5 physical illness affecting competency, the licensing agency may order the licentiate to be
6 examined by one or more physicians and surgeons or psychologists designated by the agency.
7 The report of the examiners shall be made available to the licentiate and may be received as direct
8 evidence in proceedings conducted pursuant to Section 822.”

9 8. Section 822 of the Code states:

10 “If a licensing agency determines that its licentiate's ability to practice his or her profession
11 safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the
12 licensing agency may take action by any one of the following methods:

13 “(a) Revoking the licentiate's certificate or license.

14 “(b) Suspending the licentiate's right to practice.

15 “(c) Placing the licentiate on probation.

16 “(d) Taking such other action in relation to the licentiate as the licensing agency in its
17 discretion deems proper.

18 “The licensing agency shall not reinstate a revoked or suspended certificate or license until
19 it has received competent evidence of the absence or control of the condition which caused its
20 action and until it is satisfied that with due regard for the public health and safety the person's
21 right to practice his or her profession may be safely reinstated.”

22 9. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
23 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
24 licensee or to render a decision imposing discipline on the license.

25 10. Section 118, subdivision (b), of the Code provides that the expiration of a license
26 shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period
27 within which the license may be renewed, restored, reissued or reinstated.
28

11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

DRUGS

12. "Dexedrine" is a brand of dextroamphetamine sulfate, a Schedule II controlled substance as designated by Health and Safety Code section 11055(d)(1) and is a dangerous drug per Code section 4022.

13. "Vicodin" is a brand of hydrocodone bitartrate, a Schedule II controlled substance as designated by Health and Safety Code section 11055(b)(1)(j) and is a dangerous drug per Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(FALSIFICATION OF MEDICAL RECORDS)

14. Respondent is subject to disciplinary action under sections 2761(a) and/or 2762(e) in that he falsified medical records. The circumstances are as follows:

15. On or about September 10, 2006, while employed as a registered nurse at Solano Psychiatric Health Facility in Fairfield, California, Respondent forged his co-worker's name (J.C.) on a Controlled Drug Record for Vicodin, indicating that one Vicodin tablet had been administered to patient S.M.

SECOND CAUSE FOR DISCIPLINE

(ILLEGAL POSSESSION OF CONTROLLED SUBSTANCES)

16. Respondent is subject to disciplinary action under sections 2761(a) and/or 2762(a) in that he illegally possessed Vicodin. The circumstances are as follows:

17. On or about September 10, 2006, Respondent diverted 13 Vicodin tablets, while employed as a registered nurse at Solano Psychiatric Health Facility in Fairfield, California.

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1 THIRD CAUSE FOR DISCIPLINE

2 (USE CONTROLLED SUBSTANCES IN A DANGEROUS MANNER)

3 18. Respondent is subject to disciplinary action under sections 2761(a) and/or 2762(b).

4 The circumstances are as follows:

5 19. On or about March 3, 2008, Respondent admitted to a Division of Investigations
6 Investigator that he sometimes took more Vicodin than he was prescribed (Respondent's
7 physician typically prescribed 180 Vicodin every month, which would have amounted to six
8 Vicodin tablets per day, per the prescription), and that he was probably addicted to Vicodin.

9 20. On or about March 3, 2008, Respondent admitted to a Division of Investigations
10 Investigator that he did not always take his Dexedrine as directed, and becomes "spacey" as
11 observed by his co-workers.

12 FOURTH CAUSE FOR DISCIPLINE

13 (USE OF ALCOHOL IN A DANGEROUS MANNER)

14 21. Respondent is subject to disciplinary action under sections 2761(a) and/or 2762(b).

15 The circumstances are as follows:

16 22. On or about March 3, 2008, Respondent admitted to a Division of Investigations
17 Investigator that in 2006, he drank alcohol frequently.

18 23. On several occasions in 2006, while employed at Solano Psychiatric Health Facility
19 in Fairfield, California, Respondent's supervisor sent him home because he was "reeking of
20 alcohol."

21 FIFTH CAUSE FOR DISCIPLINE

22 (MENTAL ILLNESS AFFECTING COMPETENCY)

23 24. Respondent has subjected his license to discipline under Business and Professions
24 Code section 822 which provides that a license may be revoked or suspended, inter alia, if a
25 licensing agency determines that its licentiate's ability to practice his or her profession safely is
26 impaired because the licentiate is mentally or physically ill. Respondent was examined pursuant
27 to Business and Professions Code section 820, which provides that the Board may order a
28 licentiate to be examined by one or more physicians and surgeons or psychologists designated by

1 the agency, whenever it appears that a person holding a license, certificate or permit may be
2 unable to practice his or her profession safely because the licentiate's ability to practice is
3 impaired due to mental illness or physical illness affecting competency. Respondent was
4 examined pursuant to section 820 on July 7, 2009, by psychiatrist Charles B. Schaffer, M.D. As a
5 result of said examination, Dr. Schaffer concluded that Respondent suffers from the following
6 psychological disorders:

- 7 a. Mood Disorder, Not Otherwise Specified
- 8 b. Opiod Abuse/Dependence
- 9 c. Alcohol Abuse/Dependence
- 10 d. Amphetamine Abuse/Dependence
- 11 e. Personality Disorder, Not Otherwise Specified

12 DISCIPLINE CONSIDERATIONS

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14 25. To determine the degree of discipline, if any, to be imposed on Respondent,
15 Complainant alleges that on or about August 28, 1996, in a prior disciplinary action entitled In the
16 Matter of the Accusation Against John Joseph Hayes before the Board of Registered Nursing, in
17 Case Number 94-202, Respondent's license was revoked. The revocation was stayed, and
18 Respondent's license was placed on probation for three years, for unintelligible charting of
19 narcotics. That decision is now final and is incorporated by reference as if fully set forth.

20 PRAYER

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22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
23 and that following the hearing, the Board of Registered Nursing issue a decision:

24 1. Revoking or suspending Registered Nursing License Number 403011, issued to John
25 Joseph Hayes.

26 2. Ordering John Joseph Hayes to pay the Board of Registered Nursing the reasonable
27 costs of the investigation and enforcement of this case, pursuant to Business and Professions
28 Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: _____

11/4/09

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SF2009405190